

WEST VALLEY CITY SERVICE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2008, by and between West Valley City, a municipal corporation of the State of Utah (hereinafter the “City”), and Erickson Landscaping, a Utah Corporation (hereinafter “Erickson”).

W I T N E S S E T H :

WHEREAS, Stonebridge Golf Course is owned by the City; and

WHEREAS, the bunkers at Stonebridge Golf Course are in need of repair; and

WHEREAS, the City opened this project to public bid and Erickson was selected by the City to perform the bunker repairs; and

WHEREAS, Erickson is a professional landscaping company that has the knowledge, expertise, and desire to provide the bunker repair services to the City; and

NOW, THEREFORE, for and in consideration of the mutual covenants made herein, the parties agree as follows:

A G R E E M E N T :

1. **Erickson’s Obligations.**

- a. Erickson agrees to provide the following services for the bunker repairs:
 - Debris removal and haul away
 - Drainage installation with NDS-1200 NGB 12 X 12 catch basin, including one grate box, two open slides per box and two 4 X 3 combination outlets per box
 - Import and install City-approved topsoil
 - Transition grading to existing contours as per Stonebridge standards
 - Installation of City-approved sod and seed
 - Repair of damages from construction
- b. **Project Schedule:** Erickson shall complete the project within fifty-five (55) days following execution of this Agreement.
- c. **Deliverables:** Erickson shall deliver and install the following:

- 701 cubic yards of topsoil
- 52,426 square feet of sod
- 40 catch basins

- d. **Additional Tasks At The Request of CITY:** Erickson agrees to perform any additional tasks, not specifically stated herein, requested by City in conjunction with this project.

2. **CITY's Obligations.**

- a. In consideration for the work performed and materials provided by Erickson, as set forth in Section 1 of this Agreement, the City agrees to pay Erickson an amount not to exceed Seventy-Six Thousand Dollars (**\$76,000.00**). Funds shall be paid to Erickson within thirty (30) days from receipt of invoice. In consideration for any additional services performed by Erickson at the request of City in conjunction with this project, City agrees to pay Erickson for such services and/or materials, with total compensation not to exceed Ten Thousand Dollars (\$10,000.00).

3. **Term of Agreement.** This Agreement shall commence upon execution by the parties and shall continue for a period of not more than sixty (60) days, or until either of the following occurs:

- a. Erickson completes the work set forth in this Agreement.
- b. The City has paid Erickson the maximum compensation amount Seventy-Six Thousand Dollars (\$76,000.00).

The City and Erickson expect the project to be completed within fifty-five (55) days of the execution of this Agreement. However, the expected completion time may be extended by the City, at the City's sole discretion.

4. **Termination.**

- a. In the event Erickson fails to comply with any provisions of this Agreement, or if the progress or quality of the work is unsatisfactory, the City may serve written notice thereof upon Erickson, and if Erickson fails within a period of three (3) days thereafter to correct failure, the City may terminate this Agreement upon written notice to Erickson. Upon such termination, Erickson shall immediately cease its performance of this Agreement and shall deliver to the City all completed or partially completed satisfactory work, and the City shall determine and pay to Erickson the amount due for such satisfactory work. Conditions which may result in termination of this Agreement specifically include, but are not

limited to, failure to comply with any applicable federal, state, or local laws or regulations. Notwithstanding the above, Erickson shall not be relieved of liability to the City for damages sustained by virtue of any breach by Erickson.

- b. The City also reserves the right to terminate this Agreement at any time for its convenience, or in the event that it abandons or indefinitely postpones the project. Such terminations shall be accomplished by written notice to that effect, delivered to Erickson. Upon receipt of such notice, Erickson shall immediately cease work and deliver to the City all completed or partially completed work. Payment to Erickson shall be made for work performed prior to receipt by Erickson of such termination notice, together with Erickson's cost for closing down its work, and Erickson shall have no claim for loss of anticipated profits or any additional compensation.
 - c. In the event the City fails to substantially comply with the provisions of this Agreement, or if it fails to timely pay compensation due to Erickson, Erickson may serve written notice thereof upon the City, and, if the City fails within a period of seven (7) working days thereafter to correct such failure, Erickson may terminate this Agreement upon written notice to the City. Erickson accepts no liability for damages or delays that result from its suspension of work.
5. **CITY Representative.** The City hereby appoints the Parks and Recreation Director, or his designee, as the City's representative to assist in the administrative management of this Agreement, to ensure that the work to be performed by Erickson is timely and adequately performed, and to provide for City approvals as may be required by this Agreement or the nature of the work. The City's representative shall assist in coordinating, monitoring, and evaluating this Agreement to completion. Erickson understands and agrees that the City's representative shall have no control over the means, methods, techniques, or procedures employed by Erickson, it being clearly understood that the City is interested only in the results obtained under this Agreement, with the manner and means of obtaining those results being under the sole control of Erickson.
6. **Additional Conditions.**
- a. City will furnish all applicable criteria and operating standards needed to meet City requirements.
 - b. The City agrees to limit Erickson's liability to the City and the City's sub-contractors due to professional negligent acts, errors or omissions not to exceed the amount of One Hundred Thousand dollars (\$100,000.00). This subsection shall survive the termination of this Agreement.

7. **Independent Contractor.** It is understood and agreed that Erickson is an independent contractor, and that the officers and employees of Erickson shall not be employees, officers, or agents of the City; nor shall they represent themselves to be City employees; nor shall they be entitled, as a result of the execution of this Agreement, to any benefits or protections that would otherwise be available to City employees.
8. **Conflict of Interest.** Erickson warrants that no City employee, official, or agent has been retained by Erickson to solicit or secure this Agreement upon an agreement or understanding to be or to become an officer, agent, or employee of Erickson, or to receive a commission, percentage, brokerage, contingent fee, or any other form of compensation.
9. **Indemnification.** To the fullest extent permitted by law, Erickson agrees to indemnify, defend, and hold the City harmless from and against any and all lawsuits, damages, and expenses, including court costs and attorney's fees, by reason of any claim and/or liability imposed, claimed, and/or threatened against the City for damages because of bodily injury, death, and/or property damages arising out of, or in consequence of, the performance of services under this Agreement, to the extent that such bodily injuries, death, and/or property damages are attributable to the negligence of Erickson and/or Erickson's servants, agents, employees, and/or assigns. As used in this section, the City shall also refer to the officers, agents, assigns, volunteers, and employees of the City. The indemnification required by this section shall not apply to any bodily injuries, death, and/or property damages that are attributable to the sole negligence of the City.

Erickson will maintain insurance coverage throughout the term of the Agreement. Insurance coverage will include:

1)	Worker's Compensation	
	State	Statutory
	Employer's Liability	\$100,000
2)	Comprehensive General Liability	
	Bodily Injury and Property Damage	\$1,000,000
	Combined Single Limit	\$1,000,000
3)	Automobile Liability	
	Combined Single Limit	\$1,000,000
4)	Professional Liability	\$1,000,000

10. **Subcontract Assignment.** Neither party shall assign any rights or interest herein without prior written consent of the other party.

11. **Attorney's Fees.** In the event of default hereunder, the defaulting party agrees to pay all costs incurred by the non-defaulting party in enforcing this Agreement, including reasonable attorney's fees, whether by in-house or outside counsel and whether incurred through initiation of legal proceedings or otherwise.
12. **Severability.** In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain valid and binding upon the parties.
13. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statement, promise, or inducements made by either party or agents for either party, which are not contained in this written Agreement, shall be binding or valid
14. **Modification of Agreement.** This Agreement may be modified only by written amendment executed by all of the parties hereto.
15. **Applicable Law.** This Agreement shall be governed by the laws of the State of Utah.
16. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the ERICKSON: Erickson Landscaping
 Attn: Ron Tatton
 666 West 5300 South
 Salt Lake City, Utah 84123

If to the CITY: West Valley City
 Attn: Kevin Astill
 3600 South Constitution Blvd.
 West Valley City, Utah 84119

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

WEST VALLEY CITY

Dennis J. Nordfelt, Mayor

Wayne T. Pyle, City Manager

ATTEST:

Sheri McKendrick, City Recorder

APPROVED AS TO FORM
WVC Attorney's Office

By: _____

Date: _____

ERICKSON LANDSCAPING

By: _____

Title: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 2008, personally appeared before me _____, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who affirmed that he is the _____ [title] of Erickson Landscaping, Inc. a corporation, and said document was signed by him on behalf of said corporation by authority of its bylaws or of a Resolution of its Board of Directors, and he acknowledged to me that said corporation executed the same.

Notary Public